

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4955 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ANILBHAI KANUBHAI CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

Mr.H.R.PRAJAPATI for M/S THAKKAR ASSOC. for Petitioner
Mr.S.P.DAVE, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 09/09/97

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner - detenu has challenged the detention order dated 17th June 1997 rendered by respondent No.2 under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985) (for short "the PASA Act").

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B. They inter-alia indicate that the detenu has been carrying on criminal and anti-social activities of dealing in liquor and five prohibition cases, 2 of 1996 and 3 of 1997 (last being of 23.2.1997) have been registered under the provisions of the Bombay Prohibition Act with Vyara Police Station, Vyara (Dist. Surat) against the petitioner - detenu as per the particulars set out in the grounds of detention.

3. It has been recited that the detenu's anti-social activities tend to obstruct the maintenance of public order and in support of said conclusion statements of four witnesses have been relied upon. It has also been recited that the detenu's activities are likely to adversely affect the public health.

4. The statement of the witnesses speak about incidents dated 19.10.1996, 19.11.1996, 4.12.1996 and last week of October 1996 which indicate the detenu giving threats to the concerned witnesses and beating them in public and the detenu's conduct resulting in fear amongst the people collected there.

5. It is on the basis of the aforesaid cases and the incidents that the detaining authority has passed the impugned order of detention branding the petitioner detenu as 'boot-legger' under Sec.2(b) of the PASA Act.

6. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State.

6. The petitioner has challenged the aforesaid order of detention on number of grounds, inter alia, on the ground of delay inasmuch as the cases and the incidents which have been relied upon by the authority are not proximate in time. It has been submitted on behalf of the petitioner that the last registered case is dated 23.2.1997 whereas unregistered cases are of 1996. The impugned order of detention has been passed after passage of nearly four months. This delay has not been explained by the Detaining Authority. In the context of such facts reliance has been placed on the decision of the Honourable Supreme Court in the case of P.N.Paturkar V/s. S. Rama Murti, reported in A.I.R. 1994 SC 656. There reference has been made to an earlier decision of the Apex Court in the case of A.T.Abdul Rehman V/s. State of Kerala, reported in (1989) 4 SCC 741 : AIR 1990 SC 225. Following observations have been quoted :

"The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

In the case before the Supreme Court there was a delay of five months and eight days from the date of registration of the last case and of more than four months from the submission of the proposal. The statements were obtained only after the detenu became successful in getting bail in all the cases registered against him. In so far as the present case is concerned, the facts as noted above speak for themselves. The result is that the decision in P.N.Paturkar's case (supra) would be applicable to the facts of the present case.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of P.N.Paturkar (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner-detenu Anilbhai Kanubhai Chaudhari shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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